

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 48 of 1997****For Approval and Signature:****HONOURABLE MR.JUSTICE M.R. SHAH**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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BIPINCHANDRA M PARMAR - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR RS SANJANWALA for Petitioner(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**Date : 09/11/2006****ORAL JUDGMENT**

By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, direction and/or order quashing and setting aside the order dated 23-12-1996 dismissing the

petitioner from services.

2. Petitioner was working as Sub Inspector of Prohibition and Excise under respondent No.2 and his appointment was subject to the condition that the petitioner should clear the Departmental Examination prescribed by the Rules for Departmental Examination of the Non Gazetted Prohibition and Excise Officers and Clerks of the Prohibition and Excise department. It is the case of the petitioner that under old Rules which came into existence on 8th July 1965, he was required to clear 8 papers within 4 trials in 4 years. That the petitioner being a member of backward class was entitled to four chances under the old Rules. That the petitioner appeared in Departmental Examination in October 1990, but was declared failed. Thereafter, again he appeared in October 1991 and once again, he was declared failed. He was granted exemption in paper Nos.5 & 7. Thereafter, he again appeared in October 1992 and tried to clear the remaining five papers. Once again, he failed in all five papers. The State Government framed rules in exercising powers conferred by Article 309 of the Constitution of India and in supersession of the existing rules made in that behalf, new rules were framed and under the new

rules, any person who has prior to commencement of new rules has passed the examination under old rules or has been exempted from passing the examination shall not be required to pass the examination as provided in the rules. That the petitioner made representation for giving one chance and he appeared in the Departmental Examination held under new rules in 1993 and the petitioner was declared having failed in the examination, however, exempted in paper No.1. Again in December 1994, he appeared in the remaining six papers but declared failed, however, was exempted in paper No.7 i.e. Penal and Criminal Laws. Thereafter, in November 1995, he unsuccessfully attempted to clear the Departmental Examination only but earned exemption in paper No.2 and paper No.4. It is the case of the petitioner that though the petitioner was legally entitled to one more chance under the old rules, the petitioner was not given that chance but was made to appear in the Departmental Examination afresh under the new rules and having failed and not clear the Departmental Examination within stipulated chance, the impugned order dated 23-12-1996 came to be passed and the petitioner was dismissed from services. Being aggrieved by the same, the petitioner has preferred the present Special Civil Application under

Article 226 of the Constitution of India.

3. At the time of admission of this petition, it was pointed out that identical petition being Special Civil Application No.9247 of 1995 has been admitted and the same was relied upon and therefore, this petition was admitted. It appears that the said Special Civil Application is disposed of.

4. Shri Sanjanwala, learned advocate appearing on behalf of the petitioner has submitted that though the petitioner was entitled to one more chance under the old rules, the petitioner was made to appear in the Departmental Examination under the new rules and respondents have arbitrarily and unreasonably refused to consider the exemptions and therefore, the impugned order requires to be quashed and set aside. No further submissions have been made.

5. It is not in dispute that the Special Civil Application No.9247 of 2005 is already disposed of. It is also not in dispute that the petitioner has not cleared the Departmental Examination within a stipulated time. Petitioner was given one additional chance on the

application/representation made by the petitioner vide communication dated 23-11-1995 and it was specifically mentioned in the said communication that no further additional chance will be given to the petitioner. It is also required to be noted that vide communication dated 23-12-1994, though the petitioner was given one additional chance, he could not pass the examination. However, again he made request which was granted by communication dated 23-11-1995 and again he could not pass the Departmental Examination. Thus, the petitioner was granted the permissible four chances within four years and two additional chances were given, still, the petitioner did not clear the Departmental Examination. Under the circumstances, when the petitioner has failed to pass the Departmental Examination within prescribed chances and the additional chance, the petitioner is dismissed from services, it cannot be said that there is any illegality committed by the respondents and/or impugned order passed by the respondents is in any way illegal and/or arbitrary and/or dehors the statutory rules.

6. Under the circumstances, there is no substance in the present Special Civil Application and is required to

be dismissed and is accordingly dismissed. Rule discharged. No costs.

(M.R.SHAH, J.)

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